

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Spectrum Policy Task Force Seeks Public
Comment on Issues Related to
Commission's Spectrum Policies

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ET Docket No. 02-135
DA 02-1311

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),¹ by counsel, hereby responds to the Commission's Public Notice inviting comment on issues relevant to spectrum policy.² RCA supports the Commission's initiative in designating a task force to elicit public comment on, and address, questions related to spectrum policy. RCA's concerns regarding spectrum management in rural areas, and RCA's specific policy proposals designed to address these concerns, have been detailed on numerous occasions in various Commission proceedings. Accordingly, RCA is encouraged by the Commission's systematic approach to spectrum policy issues, as evidenced by the initiation of this inquiry, and hopeful that the task force will give serious consideration to RCA concerns and proposals.

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing rural wireless service providers.

² *Spectrum Policy Task Force Seeks Public Comment on Issues Related to Commission's Spectrum Policies*: Public Notice, ET Docket No. 02-135, DA 02-1311 (rel. June 6, 2002).

I. Congressional Mandates Require the Extension of Meaningful Licensing Opportunities to Small Businesses and Other Designated Entities

The Commission must ensure that its auction processes provide meaningful opportunities for small businesses and other designated entities. Congress directed the Commission to design its competitive bidding regulations to “promot[e] economic opportunity and competition . . . by . . . disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”³ Congress also directed the Commission to promote “the development and rapid deployment of new technologies, products and services for the benefit of the public, including those residing in rural areas.”⁴ In accordance with these directives, the Commission established the C and F Block set-asides for small businesses and other designated entities to become licensees of PCS spectrum, established smaller BTAs as the geographic confines of a license, permitted qualifying small businesses to pay for the spectrum in installments, and provided opportunities for small businesses to obtain bidding credits.

In recent years, however, the Commission has abandoned set-aside auctions and installment payment plans, and has established attribution rules, which unreasonably require that the revenues of officers and directors be attributed to the entity for purposes of determining

³ 47 U.S.C. § 309(j)(3)(B). *See* 47 U.S.C. § 309(j)(4)(C), (D) (Congress’ directive that the Commission promote “economic opportunities for . . . small businesses” and to ensure that “small businesses . . . are given the opportunity to participate in the provision of spectrum-based services”).

⁴ *See* 47 U.S.C. § 309(j)(3)(A).

bidding credit eligibility. The Commission has also made it more difficult for small businesses to obtain spectrum by auctioning spectrum licenses predominantly for large geographic areas.⁵

The Commission responded drastically to the revelation and exploitation of certain flaws in its original implementation of reasonable and effective mechanisms to execute Congressional goals, such as installment payment plans and set-asides. These mechanisms have been abandoned completely, rather than analyzed and modified. While it is clear that the execution of these concepts requires significant improvement, this task should not deter the consideration that installment payment plans and set-asides could be utilized productively and successfully in future auctions.

Furthermore, it is imperative that the Commission modify its Rules to address the fact that its "controlling interest" standard, as set forth in Section 1.2110(c)(2)(ii)(F) of the Commission's Rules, penalizes the small, locally-owned companies and cooperatives by attributing to the telecommunications company the gross revenues of the outside business interests of its officers and directors, even though these outside business interests are unrelated to the telecommunications industry and have no impact on the company's ability to raise capital or compete for FCC licenses.⁶ It would appear that the Commission's adoption of this

⁵ Although participation by small businesses appears to be significant in the 700 MHz auction (*see Auction of Licenses for 698-746 MHz Band, 128 Qualified Bidders: Public Notice*, Report No. AUC-02-44-F (Auction No. 44) DA 02-1346 (rel. June 7, 2002)), the recent exception of MSA/RSA licensed areas for 700 MHz licenses is marred by the variety of uncertainties which have plagued this spectrum block, including equipment availability and timing and expense of encumbrance removal.

⁶ *See* Petition for Reconsideration of the Rural Telecommunications Group, WT Docket No. 97-82, filed September 28, 2000 at 8; supporting comments of National Telephone Cooperative Association, WT Docket No. 97-82, filed October 30, 2000 at 4.

interpretation also is an attempt to correct a perceived flaw in its original auction design. While RCA concurs with the underlying concern that definitions and categories of applicants be immune from inappropriate manipulation, the decision to attribute the business revenues of the local leading citizens, such as bankers, attorneys, and manufacturers, who regularly support and serve their communities and neighboring businesses by serving as Board members, is completely misguided, particularly where there is no concomitant indicia of control. The current litmus test may serve the goal of administrative efficiency, but it is a barrier to meaningful participation by small businesses in the auctions because it precludes availability of the bidding credits implemented to satisfy Congressional directives.

In addition, despite the cloud surrounding the 700 MHz Lower Band Auction, the large number of small businesses and other designated entities participating demonstrates that the Commission should continue to make spectrum available in MSA/RSA size geographic territories.⁷ RCA applauds Commissioner Copps, who recently stated, "I will continue to push for RSAs to promote rural service, and will not rely on partitioning and disaggregation for this purpose."⁸

⁷ See *In the Matter of Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59): Report and Order*, GN Docket No. 01-74, FCC 01-364 at para. 171 (rel. Jan. 18, 2002) ("Licensing a portion of the Lower 700 MHz Band over these small geographic areas balances the playing field such that small and rural providers will have an opportunity to participate in the auction and the provision of spectrum-based services").

⁸ *Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands: Report and Order*, WT Docket No. 02-8, RM-9267, RM-9692, RM-9797, RM-9854, RM-9882 at 120 (rel. May 24, 2002) ("Government Transfer Bands Report and Order").

To ensure that Congress' directives are achieved, the Commission must continue to utilize proven mechanisms, re-evaluate implementation of reasonable methods, and explore new avenues to provide meaningful opportunities for small businesses and other designated entities to participate in the auction process.

II. To Achieve the Commission's Goals of Deployment of Fallow Spectrum In Rural Areas, the Commission Should Adopt RCA's Proposal to Open Geographic Areas Unserved and Underserved by A and B Block to Fill-in Applications

In response to the announcement that a Notice of Inquiry will be issued by year's end to examine the availability of wireless services in rural America, Commissioner Copps expressed his concern that current spectrum policies rely too much on partitioning and disaggregation to provide small businesses and new entrants with access to spectrum in unserved or underserved areas.⁹ The Commissioner noted that record evidence refutes the belief that nationwide carriers will partition or disaggregate their large regional licenses if it finds that it will not use the rural portion of the spectrum.¹⁰ Specifically, the Commissioner cited rural telecommunications providers that have stated "emphatically that partitioning and disaggregation do not result in significant new service to rural areas."¹¹ The Commissioner stated,

These rural carriers explain that the cost to a national carrier of negotiating and signing a partitioning or disaggregation deal with a small carrier is often higher than the profit the nationwide carrier would gain from the deal. Therefore, they find it better business to let the rural spectrum lie

⁹ Government Transfer Bands Report and Order at 119.

¹⁰ *Id.*

¹¹ *Id.*

fallow, even if the rural carriers are interested in using it.¹²

To address this issue of fallow spectrum in rural areas, RCA has long advocated opening the A and B PCS spectrum blocks to expedited “fill-in” applications where spectrum remains unused.¹³ Under this proposal, small businesses or other designated entity could apply for “fill-in” rights at the end of the five-year build-out for A and B Block PCS licensees, which has already expired. After receiving notice that the application has been filed, the existing A or B Block licensee could seek denial of the application on the basis of its demonstration that it will cover the designated area within the time frame proposed by the fill-in application. Thus, the adoption of this proposal would provide for the protection of rights of nationwide carriers while promoting the public interest by ensuring that unused spectrum is developed, either by the designated entity applicant or the nationwide carrier.

III. Spectrum Leasing is Too Burdensome for Rural Providers

In its comments in the secondary markets proceeding, RCA demonstrates that in the context of rural markets, arrangements that allow for the spectrum to be returned to the lessor carrier after a period of time do not adequately assure the lessee carrier that its build-out costs will be recovered.¹⁴ Accordingly, spectrum leasing will not provide the incentives necessary to promote build-out in rural markets.

¹² *Id.* at 119-120.

¹³ See, e.g., RCA’s Comments filed on June 22, 2000 and Reply Comments filed on June 30, 2000 in WT Docket No. 97-82.; RCA’s Comments filed on February 9, 2001 in WT Docket No. 00-230 (“RCA’s Spectrum Leasing Comments”); RCA’s Reply Comments filed on May 15, 2001 in WT Docket No. 01-14.

¹⁴ RCA’s Spectrum Leasing Comments at 3-4.

Additionally, in its comments, RCA raises a number of concerns with spectrum leasing in general.¹⁵ Some of these same concerns are raised by Commissioner Copps in the context of the use of private entities called “band managers” that are authorized by the FCC to act as a “spectrum broker.”¹⁶ The Commissioner stated his belief that “Congress chose the FCC to manage spectrum because the protections inherent with the FCC allocation of spectrum outweigh the costs.”¹⁷ The Commissioner further stated,

I understand resource constraints and all the other arguments used to justify the conferring onto others of the authority reposed in us. In my mind, none of these arguments even begins to offset the Commission’s obligation to perform its duties itself as the agent of the American public to manage the American public’s spectrum.¹⁸

Accordingly, if the Commission decides to move ahead with spectrum leasing, it should not rely on band managers or carriers to fulfill its statutory obligations to promote wireless services to rural areas and disseminate licenses among small businesses and other designated entities.

¹⁵ RCA’s Spectrum Leasing Comments at 4.

¹⁶ Government Transfer Bands Report and Order at 119 (raising several “practical questions” about band management).

¹⁷ *Id.* at 118.

¹⁸ *Id.* at 119.

IV. Conclusion

The initiation of this inquiry affords the Commission with an opportunity to fulfill statutory mandates by ensuring that its auction processes provide meaningful opportunities for small businesses and other designated entities. Accordingly, the Commission should use this inquiry to consider ways in which proven mechanisms can continue to be used in its auction processes and modify its Rules to address the fact that its "controlling interest" standard penalizes the small, locally-owned companies and cooperatives. Additionally, the Commission should adopt RCA's proposal to open geographic areas unserved and underserved by A and B spectrum blocks to expedited "fill-in" applications where spectrum remains unused and not rely on band managers or carriers to promote wireless services to rural areas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Renee Gross, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" was served on this 8th day of July 2002, via hand delivery to the following parties:


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